



Emergency Response Cleanup

Contractors conducting emergency response cleanup face environmental exposure from handling contaminants such as mold, asbestos, lead, radioactive waste, various poisons, chemicals, explosives, acids, petroleum products, oil spills, and other hazardous materials. They may also neutralize and cleanup materials that are flammable, corrosive or toxic. Contractors that perform this work face potential pollution risks that may be incurred during emergency response, remedial actions, abatement of contaminated sites, and waste transport and disposal. Environmental liability could result from a release of hazardous and non-hazardous materials into the soil at the site or to neighboring properties; discharges into

storm or sewer drains that may impact the municipal sewer system; and releases to surface water or groundwater that could contaminate local wells or the city drinking water system. Releases of hazardous materials or waste could result in liability for cleanup, third-party property damage and bodily injury, and damage to natural resources such as lakes, rivers, streams, biota or wildlife.

Environmental Exposures May Include

- Emergency Response contractors may be required to lab pack chemicals during cleanup actions. Improper segregation or characterization of chemicals could result in incompatible wastes, such as oxidizers, acids, and flammables being packed together and causing a reaction, a release or a fire.
- During emergency response cleanup, failure to properly seal off, clean up and decontaminate a job site, or failure to properly use equipment could cause a release of contaminants into areas previously unaffected or leave residual pollutants that can lead to further contamination in soil and groundwater or claims for third party liability.
- During an emergency response cleanup, hazardous materials and hazardous waste require proper handling and disposal procedures. Collected wastes must be properly characterized and segregated based on the type and hazards associated with them. Collected wastes that contain hazardous materials or materials that require special disposal procedures could be mixed with non-hazardous wastes and improperly disposed. Improperly segregated and disposed of wastes can result in regulatory fines or lead to cleanup and environmental tort liability. When an investigation for improper disposal occurs at a disposal facility, it can result in potential liability for all parties that manifested waste into the facility.
- Waste container breaches or improper handling of hazardous waste may result in releases at either the job site or storage location. Releases can also occur during loading and unloading operations and during transportation to and from the job site to a disposal facility or storage location. During the cleanup of hazardous and non-hazardous materials, emergency response cleanup contractors may be required to transport and store this waste at their owned site or at temporary storage facilities pending final disposal.
- Emergency response contractors may transport and use hazardous chemicals, disinfectants, deodorizers, and fungicides at a job-site. During transportation to and from sites where emergency response activities are to be conducted, or during loading and unloading operations, spills or leaks of these materials can lead to cleanup liability for the contractor. At the cleanup site, chemicals used at improper application rates or concentrations, in combination with other chemicals or with incorrect delivery systems, can cause residues to remain inside buildings, which can impact human health by direct surface contact or inhalation, or collect in runoff from outside surfaces.
- Stored stock supplies, including chemicals used to clean and disinfect sites, are often in concentrated form. Container leaks of incompatible or reactive materials may cause a release of toxic gas or fumes (such as hydrogen chloride or ammonia), or generate enough heat for combustion of nearby burnable materials.
- Equipment used during emergency response operations may be powered by diesel fuel and required petroleum-based hydraulic fluids and lubricants. Spills and leaks might occur during refueling or maintenance, which can contaminate job site soils and the business equipment yard.
- Fuel and chemical spills must be contained and cleaned up. Emergency response contractors may use sorbents, booms, socks or spill pads when containing spills. Vacuum trucks may be used to recover liquid products. Waste materials recovered or generated at spill sites must be properly characterized and disposed.
- Wastewater generated at work sites from wet solution cleaning procedures can contain contaminants such as silts, detergents, oil/grease, solvents, pathogens, biohazards, molds and mold spores, bacteria, flame retardants and other toxic chemicals. Wastewater from these operations can create migratory pathways for contamination to flow on/offsite if recapture methods are not in-place or if the wastewater flows beyond recapture points. Releases may damage a private septic system or drinking water well, site soils and/or groundwater. Releases to a storm water drain inlet or ditch may contaminate surface water and harm natural resources.
- Untreated wash water that is generated from cleaning emergency response equipment and personal protective gear must be properly managed, contained and disposed to prevent it from being discharged into the sanitary sewer system and potentially contaminating and damaging the downstream wastewater treatment plant.
- Improper identification or the failure to completely identify and remove all areas of contamination may result in inadequate recommendations and remedial actions. This could lead to spreading of contaminants, residual hazards from incomplete abatement, additional remediation, tort liability, punitive damages, fines and regulatory violations.

Contractors Pollution Liability Can Provide Coverage For

- Contracting operations done “by or behalf of” the insured
- Contracting operations performed at a job site
- Third-party claims for bodily injury and property damage
- Third-party claims for cleanup
- Defense of third-party claims
- First-party emergency response costs
- Lead and asbestos
- Mold, legionella, bacteria and more
- First and third-party transportation pollution liability
- Loading and unloading
- Non-owned disposal sites
- Sudden and accidental coverage for owned/leased locations
- Emergence response cleanup contractors may be able to combine Commercial General Liability, Contractors Pollution Liability and Professional Liability into one package policy. Worker’s Compensation and Auto may also be offered.

Claims Scenarios & Examples

- A remediation contractor was hired by the EPA to address the cleanup of an abandoned gold mine. The contractor was using heavy equipment when it accidentally triggered a breach in the mine causing the release of an estimated three million gallons of toxic sludge from the mine into a nearby river. The remediation contractor had signed an agreement with the EPA to provide emergency protection from pollutants from the mine prior to the accident. The breach was eventually abated and cleanup of the river and its tributaries is ongoing.
- A global environmental response company and an agricultural supplier agreed to pay \$39,330 to settle a hazardous waste violation associated with mishandling wastewater containing the fumigant methyl bromide. Following the cleanup of a fire that damaged a building where containers of methyl bromide gas were stored, the emergency response contractor stored the 14,000 gallons of the purged acidic wastewater in a storage tank. The wastewater corroded an unlined valve in the tank, allowing the pollutant to escape and enter a nearby dry well. Approximately 2,300 gallons of the waste material water was recovered. The contractor and the supplier were cited and fined for failing to place the wastewater in a container that was compatible with the material.
- An emergency response contractor was hired to remove chemical waste from a large industrial facility. While consolidating and packaging waste prior to off-site transportation and disposal, incompatible chemicals were mixed, resulting in an explosion and release of a toxic vapor cloud. The explosion and ensuing vapor cloud contaminated the project site and surrounding residential properties. Site owners and numerous third parties were sued for resulting bodily injury, physical damage and clean-up costs.
- During remedial activities at a Superfund landfill site, an emergency response contractor (RAC) inadvertently crushed several drums that were improperly classified as empty. As a result, several gallons of hazardous contents were released, causing localized soil contamination. The contractor failed to notify the EPA of the release, which resulted in civil actions against the contractor. The contractor was held liable under CERCLA and was required to pay penalties exceeding \$6.1 million.
- A hazmat contractor’s dirt incineration plant had an accidental release that dumped ash on homes and cars resulted in a class action suit. The plant malfunction sent approximately 761 pounds of ash into nearby neighborhoods during routine incinerator operations, the company said. The whole four-block radius around the incinerator was totally covered in ash, said an organizer for an environmental group. The state found high levels of metals in soil in and around the neighborhood.

Final Consideration

As a contractor you can be faced with the cost to defend yourself against allegations or legal action from pollution related events, regardless if you are at fault or not. Having the proper insurance coverage in place will help fund the expenses incurred to investigate or defend against a claim or suit and provide you with environmental claims handling expertise.

This environmental risk overview has been developed by Environmental Risk Professionals on behalf of J. Loos & Associates. It is intended to provide the reader with a broad range of potential risks they may encounter and may not reflect all risks associated with their business. To verify available insurance coverage, please consult your insurance representative.

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